

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN R. PARKS and DEPARTMENT OF THE AIR FORCE,
ENGLAND AIR FORCE BASE, La.

*Docket No. 95-2540; Submitted on the Record;
Issued January 15, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs abused its discretion by denying appellant's request for a lump-sum payment of his wage-loss compensation benefits.

On November 11, 1983 appellant, then a 38-year-old painter, injured his back while lifting scaffolding. On January 13 and November 1, 1984, the Office accepted his claim for low back strain and chemoneucleolysis of the L5-S1. Appellant wrote the Office on August 7, 1991 requesting a lump-sum settlement of wage-loss benefits he was to receive from his November 1983 employment injury. Appellant submitted a letter explaining why he believed that a lump-sum settlement would be in his best interest. The Office denied appellant's request for a lump-sum settlement by decision dated October 9, 1991.

On October 18, 1991 appellant requested an oral hearing before an Office hearing representative. In response to questions posed by the Office hearing representative, appellant submitted a financial investment plan to demonstrate why the lump-sum settlement would be in his best interest. By decision dated July 21, 1992 and finalized July 22, 1992, the Office hearing representative affirmed the Office's prior decision. Appellant appealed this determination to the Board. By decision dated September 14, 1994, the Board remanded the case to the Office, finding that since the Office had not issued any decision regarding the degree of appellant's disability and therefore had not determined his loss of wage-earning capacity, it was premature for the Office to issue a decision on a lump-sum settlement since appellant developed his investment plans and the Office adjudicated the same without knowing what would be the amount of the lump-sum settlement.¹ By decision dated November 1, 1994, the Office denied appellant's request for a lump-sum settlement. This decision was affirmed by an Office hearing representative in a decision dated June 14, 1995.

¹ Docket No. 93-2163.

The Board has duly reviewed the case record and concludes that the Office did not abuse its discretion by denying appellant's request for lump-sum payment.

Section 8135(a) of the Federal Employees' Compensation Act,² which allows for the discharge of liability of the United States by payment of lump sums, affords full discretion to the Secretary of Labor to decide whether or not to authorize payment of lump sums as a means of fulfilling the responsibility of the Office in administering the Act. Revised 20 C.F.R. § 10.311(a) now provides that a lump-sum payment of wage-loss benefits will no longer be considered. This reflects the Secretary's determination that lump-sum payments of wage-loss benefits under the Act would no longer be considered. 20 C.F.R. § 10.311 provides:

“(a)(1) In exercise of the discretion afforded by section 8135(a), the Director [of the Office] has determined that lump-sum payments will no longer be made to individuals whose injury in the performance of duty as a federal employee has resulted in a loss of wage-earning capacity. This determination is based on, among other factors:

- (i) The fact that FECA is intended as a wage-loss replacement program;
- (ii) The general advisability that such benefits be provided on a periodic basis; and
- (iii) The high cost associated with the long-term borrowing that is necessary to pay out large lump sums.

“(2) Accordingly, where applications for lump-sum payments for wage-loss benefits under sections 8105 and 8106 are received, the Director will not exercise further discretion in the matter.”³

The rationale for promulgating the regulation, which was made effective for all pending and future cases, is set forth in the Federal Register,⁴ and was adopted by the Board in *Kenneth L. Pless*.⁵ The Office determined that the government would fulfill its obligation for wage-loss benefits only by means of a periodic rather than lump-sum payment and that there was no need to exercise further discretion in an individual case. Section 8135(a) of the Act, which pertains to lump-sum awards, vests the Director of the Office with the discretionary authority to determine whether or not it will grant a lump-sum award following a determination that a claimant

² 5 U.S.C. § 8135(a).

³ 20 C.F.R. § 10.311(a)(1)-(2) (April 1993).

⁴ 57 Fed Reg. 35,752 (1992).

⁵ 45 ECAB 175 (1993).

is entitled to compensation for wage loss.⁶ In *Pless*, the Board found that it was the intent of Congress that discretion be delegated to the Secretary, and hence to the Office, in the determination of whether or not to grant a lump-sum payment.

The Office has determined to exercise its discretionary authority through the promulgation of federal regulations codified at 20 C.F.R. § 10.311(a). By these regulations, the Office determined that lump-sum payments would no longer be made to individuals whose injury in the performance of duty resulted in a loss of wage-earning capacity. The Board has found that this exercise of discretion by regulation is not in conflict with the intent of the Act, and that promulgation of the regulations at section 10.311(a) does not constitute an abuse of discretion by the Office.

Additionally, Chapter 2.1300 of the Federal (FECA) Procedure Manual was revised by the Office to reflect the regulatory changes.⁷ FECA Transmittal No. 92-3 advised the district offices of the changes in the federal regulations, noting that the rule was effective on September 10, 1992 and “applies to all requests received on and after that date as well as any pending requests.”

The Board thus finds in the present case that the regulation codified at 20 C.F.R. § 10.311(a) was promulgated as an appropriate exercise of the Office’s delegated authority, is clearly applicable to appellant’s application which was pending at the time the regulation was changed and is dispositive on the issue of appellant’s application for a lump-sum payment pursuant to 5 U.S.C. § 8135(a).

⁶ The Director of the Office is the designated representative of the Secretary of Labor with respect to administration of the Act. 5 U.S.C. § 8145 states as follows: “The Secretary of Labor shall administer and decide all questions arising under this subchapter. He may -- (1) appoint employees to administer this subchapter, and (2) delegate to any employee of the Department of Labor any of the powers conferred on him by this subchapter.” Pursuant to 5 U.S.C. § 8145 the Secretary of Labor has delegated responsibility for administering the provisions of the Act, except for 5 U.S.C. § 8149 which pertains to the Employees’ Compensation Appeals Board, to the Director of the Office and his or her designees; *see* 20 C.F.R. § 10.2.

⁷ *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Lump-Sum Payments*, Chapter 2.1300, (September 1992). In the revised rules, published August 11, 1991 and effective September 10, 1992 (57 Fed. Reg. 35,752), the Director determined that, in the exercise of discretion afforded in section 8135(a), lump-sum payments of wage-loss compensation will no longer be made. Thus, compensation which is based on loss of wages will be paid in periodic payments only.

The decisions of the Office of Workers' Compensation Programs dated June 15, 1995 and November 1, 1994 are hereby affirmed.

Dated, Washington, D.C.
January 15, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member